IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22837 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABDUL MUSABHAI SETA - Petitioner(s)
Versus
CHIEF OFFICER & 1 - Respondent(s)

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Appearance :
MR PRANAV M RAVAL for Petitioner(s) : 1,
MR MUKESH A PATEL for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 27/11/2007

ORAL JUDGMENT

1. With the consent of the learned Counsel appearing for both the sides, the matter is

finally heard today.

2. The petitioner has preferred the petition for challenging the legality and validity of the order dated 15.2.2006 Annexure “H”, whereby the Inquiry Officer has submitted the report and at the bottom of the inquiry report, there is also reference to the termination.

3. This Court (Coram: H.K. Rathod, J.), on 10.8.2007, had passed the following oder:-

> “1. Heard learned advocate Mr.K.M.Paul for the petitioner and learned advocate Mr.M.A.Patel for respondent No.1.
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> 2. Learned advocate Mr.Paul submitted that the order of dismissal was passed by inquiry officer, who was an Advocate, held departmental inquiry against the petitioner. He submitted that inquiry officer has no power to pass punishment order and that power is with the competent authority according to provisions of Gujarat Municipality Act.
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> 3. Learned advocate Mr.Patel for respondent No.1 submitted that affidavit in rely is filed by the respondent No.1

Municipality and disputed the contentions raised by petitioner. The conclusion arrived by inquiry officer is just, legal and valid. According to respondent, petitioner has been indulged in the private business even prior to the actions contemplated. He remained absent because he was busy in personal business. During the suspension period also, he was gainfully employed, remained with the private business. Therefore, the suspension allowance was not paid to the petitioner. So number of contentions raised by the respondent in the reply.

4. Therefore, the question involved in the present petition requires detailed examination. Hence, Rule returnable on 19.10.2007.

5. Learned advocate Mr.Patel wavies service of rule on behalf of respondent No.1 Municipality."

4. Today, when the matter is further taken up for hearing, Mr.A. Patel for Mr.Mukesh A. Patel, learned Counsel for Respondent No.1 and 2 placed on record the communication dated 15.11.2007, which is also confirmed as received by the petitioner, showing that the report of the

Inquiry Officer is to be treated as inquiry report and the further action is to be taken by the Municipality and, therefore, the petitioner has been called upon to submit the reply within the stipulated time limit.

5. In view of the above, it is clear that the communication at Annexure “H” is to be treated as the inquiry report of the Inquiry Officer and is not to be treated as the order for imposition of punishment of dismissal. Further, as declared on behalf of the Municipality, further action for punishment or otherwise is to be taken by the Municipality itself.

6. Under these circumstances, as the opportunity of hearing is to be given and the disciplinary proceedings are yet to be concluded, and the services of the petitioner are not, up till now, terminated, no relief deserves to be granted to the petitioner against the alleged order of termination, but it is further clarified that the Municipality shall be at liberty to proceed in accordance with law for passing final order in the disciplinary proceedings. It is also

clarified that if the final order is against the petitioner, the petitioner shall be at liberty to challenge the same in accordance with law.

7. Mr.Raval, learned Counsel for the petitioner, submitted that even the subsistence allowances have not been paid to the petitioner, if the petitioner is treated under suspension from 9.5.2000 onwards.

8. Whereas, Mr.Patel for the Municipality contended that the petitioner was doing business during the said period.

9. In view of the aforesaid, I find that it will be for the respondent Municipality to examine the aspects of payment of subsistence allowances and to take appropriate action, may be prior to the final order in the disciplinary proceedings or simultaneously.

10. The petition is disposed of accordingly. Rule made absolute accordingly. No order as to costs.

27.11.2007 **(Jayant Patel, J.)**

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